

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15**

J & S AUDIO VISUAL COMMUNICATIONS, LLC

and

**INTERNATIONAL ALLIANCE OF THEATRICAL
STAGE EMPLOYEES, LOCAL 69**

**CASE NOS. 15-CA-211133
15-CA-214849
15-CA-234806
15-CA-236530**

EMPLOYER’S MOTION TO RESCHEDULE HEARING DATE

NOW COMES J&S Audio Visual Communications, LLC (“Employer” or “JSAV”), and in accordance with the Board’s Rules and Regulations, together with the Regional Director’s July 23, 2019 Order Consolidating Cases, Consolidated Complaint and Notice of Hearing (the “Order and NOH”), timely requesting that the hearing currently scheduled for October 28, 2019 be rescheduled to December 11, 2019, or such other date after October 31, 2019 as the Regional Director may determine to be fair and appropriate under the totality of circumstances. In support hereof, the Employer shows the Region as follows:

1. The Employer’s undersigned counsel has continuously represented it throughout each and all of the cases that have been consolidated herein. The Employer wishes that he continue doing so, including appearance and representation at the Hearing for these consolidated cases.
2. The Employer’s undersigned counsel, however, has a *pre-existing* trial conflict involving a *previously* set trial that will be conducted before a sister federal agency, the particulars of which follow.
3. On May 29, 2019, the Employer’s undersigned counsel was specially set for trial before the *Occupational Safety and Health Review Commission* (OSHRC), in OSHRC Docket

No. 18-1232. That trial will begin on October 29, 2019 in Dallas, Texas, and is scheduled to continue through October 31, 2019. The OSHRC ALJ's order so setting that matter for trial was issued on **May 21, 2019**—more than two months *before* the Employer's undersigned counsel received the Notice of Hearing in this matter on **July 29, 2019**.

4. Because the Hearing in this matter is to begin (but not necessarily *conclude*) on October 28, 2019 in Memphis, Tennessee (the day before trial proceedings in OSHRC Docket No. 18-1232 are to begin in Dallas, Texas), it will be physically impossible for the Employer's undersigned counsel to prepare, appear for, and try both cases as currently scheduled.
5. Since the OSHRC trial was set well before the hearing in this case, the Employer requests *brief* postponement of *this* case so that its counsel will have appropriate opportunity to prepare for and participate in the trial of both cases pursuant to a reasonable schedule. The Employer's counsel recognizes that in federal administrative practice, it is customary that where counsel have overlapping or conflicting trial settings, the hearing that was scheduled *first in time* is ordinarily accorded *deference* over a later-scheduled hearing, absent compelling exigencies. And quite clearly in this case, there are no exigencies at all that would suggest deviation from such an approach.¹

¹ When responding to JSAV's request for a written statement concerning its position on the postponement request, the Charging Party (IATSE, Local 69) said it was opposed in large part because (it claims) there is an **"active and ongoing situation of violations"** by the Employer (*See* Sam Morris statements in **Exhibit A**, the e-mail chain among Employer's undersigned counsel, Ms. Linda Mohns for the Region, and Mr. Morris, as Local 69's attorney and also in his capacity as official representative of the Charging Party). However, this basis for opposition is demonstrably spurious. In the very *latest* instance of unfair labor practices that have been alleged by IATSE, Local 69, the claimed misconduct supposedly took place on February 22, 2019—**nearly six months ago**. Those charge allegations describe discrete (i.e., non-continuing) Section 8(a)(1) violations via alleged threats and interrogation (*See* Amended Charge in Case No. 15-CA-236530, attached as **Exhibit B**). Any way you look at it, a handful of discrete Section 8(a)(1) events that took place *more than six months ago* does not make the case for *"active and ongoing...violations."* Thus, there is no urgency that the Hearing should be held on October 28, 2019, as opposed to any other date the Regional Director might find appropriate. This is especially true since there is nothing in the consolidated charges that relates to any pending representation election where time might be of the essence.

6. As required by the Regional Director's Order and NOH, the Employer notified the Charging Party in advance about this request to reschedule the hearing date and solicited the Charging Party's position (see e-mail chain attached as **Exhibit A**). When so notified, the Charging Party responded with general opposition but would not propose any alternative hearing date. The Charging Party additionally claimed it would suffer prejudice by *any* postponement that might be allowed, but provided no facts or explanation as to *how* or *why* that would be so.
7. To that point, however, the Employer directs the Region's attention to the Union's own unfair labor practice charges, which establish that there is no need at all (let alone any grounded in urgency) to conduct the Hearing on October 28, 2019, to the exclusion of any other dates, and the disregard of all other circumstances. *See* n.1, *supra* at 2. Since Local 69's own account of facts establishes that the very *latest* instance of alleged unfair labor practices between the parties supposedly took place **nearly six months ago**, there is no "*active and ongoing situation of violations*" for which an October 28, 2019 hearing is critical.
8. More broadly, the Employer notes that the allegations of unfair labor practices made by the Charging Party in all but one of the consolidated charges involve matters of *law* rather than issues of *fact* (i.e., whether a valid and enforceable recognition agreement and bargaining relationship can arise out of a labor organization's insistence upon employer acquiescence to an *unlawful prehire agreement*). With that additionally in mind, it seems clear that there will be no prejudice to anyone if the consolidated cases are heard on December 11, 2019, or any other date after October 31, 2019 that the Regional Director might determine to be appropriate.

9. The Charging Party's only remaining basis for opposition to the rescheduling motion arises out of the fact that the Employer's undersigned counsel is a member of a law firm that maintains (among other locations), an office in Memphis, Tennessee. According to the Charging Party, that somehow obligates the Employer to engage a firm attorney other than the undersigned for representation at the Hearing for this case, regardless of that attorney's involvement (or knowledge) of the matters at issue.
10. This position by the Charging Party is nonsensical and plainly improper. **Individual lawyers—not law firms—represent parties before the Board.** A party's right to representation by its attorney of choice is not conditioned upon the number of other attorneys in his or her law firm, or the locations from which those lawyers practice.
11. Moreover, the current Hearing date was selected by the Regional Director, and **not the Charging Party for its preference or convenience.** Accordingly, Local 69 doesn't have a proper basis for objecting to other hearing dates, absent compelling cause (none so far stated) or its own legitimate conflicts with other federal agency proceedings. To state the obvious, there is no important reason why the Employer's undersigned counsel should not be reasonably accommodated when a sister federal agency has *previously* scheduled him for trial in a matter in which (as here) he is the Employer's singular counsel of record, and there do not appear to be significant countervailing exigencies.
12. When weighing the legitimate interests of the parties and after considering the public enforcement responsibilities of the Board, the Employer respectfully suggests that good cause to reschedule the Hearing has been demonstrated. No prejudice will befall the Charging Party if the motion is granted, and there is no reason to believe that an alternative Hearing date that is convenient for all concerned cannot be found. Rather, the Act will be

properly served by allowing all parties to continue being represented by the attorneys they have chosen for that purpose, with due regard for scheduling conflicts that may arise in connection with the other matters they handle before sister agencies of the United States government.

WHEREFORE, J&S Audio Visual Communications, LLC requests that this Motion to Reschedule Hearing Date be granted and that the Hearing be rescheduled to December 11, 2019, or such other date after October 31, 2019, as the Regional Director finds to be fair, reasonable and appropriate under the Act.

Respectfully submitted,

Michael V. Abcarian
FISHER & PHILLIPS LLP
500 N. Akard St., Suite 3550
Dallas, Texas 75201
Telephone: (214) 220-9100
Facsimile: (214) 220-9122
Email: mabcarian@fisherphillips.com

/s/ Michael V. Abcarian

Michael V. Abcarian

ATTORNEY FOR EMPLOYER

CERTIFICATE OF SERVICE

This certifies that on the 5th day of August, 2019, a true and correct copy of the above and foregoing instrument was served as follows:

M. Kathleen McKinney
Regional Director
NATIONAL LABOR RELATIONS BOARD
REGION 15
600 S. Maestri Place, 7th Floor
New Orleans, LA 70130-3413
Via NLRB E-Filing Portal

Samuel Morris, Attorney
GODWIN, MORRIS, LAURENZI, & BLOOMFIELD, P.C.
50 N. Front St., Suite 800
Raymond James Tower
Memphis, TN 38103-2181
Via Email: smorris@gmlblaw.com

Linda M. Mohns
Field Attorney
NLRB Subregion 26
80 Monroe Avenue, Suite 350
Memphis, TN 38103
Via Email: Linda.Mohns@nrlb.gov

/s/ Michael V. Abcarian

Michael V. Abcarian

EXHIBIT A

From: Samuel Morris <smorris@gmlblaw.com>
Sent: Wednesday, July 31, 2019 2:55 PM
To: Mohns, Linda; Abcarian, Michael
Cc: DALLAS DOCKET
Subject: RE: Hearing for JSAV and IATSE, Local 69

Thank you, Ms. Mohns. The Union's position is as follows:

The Union opposes Respondent's request as the Complaint reflects an active and ongoing situation of violations of the Act which pre-date any supposed conflict, and requesting Counsel is a member of a nation-wide firm that has offices, notably, in Memphis.



Samuel Morris
Godwin Morris Laurenzi Bloomfield
50 N. Front St
Suite 800
Memphis, TN 38103
901 528 1702
901 949 1144

From: Mohns, Linda <Linda.Mohns@nrlb.gov>
Sent: Wednesday, July 31, 2019 2:40 PM
To: Abcarian, Michael <mabcarian@fisherphillips.com>; Samuel Morris <smorris@gmlblaw.com>

Cc: DALLAS DOCKET <DALLAS_DOCKET@fisherphillips.com>

Subject: RE: Hearing for JSAV and IATSE, Local 69

Mr. Abcarian,

Your motion to postpone the scheduled hearing in this case to a new date in December should be made to the Regional Director, since the scheduled hearing date is more than 21 days away (NLRB Rules and Regs Section 102.16[a][5]). Since the motion will be directed to the Regional Director, it is not necessary for me to take a position on your request. Mr. Morris' position should be reflected in your motion.

Linda Mohns

Field Attorney

NLRB Subregion 26

80 Monroe Avenue, Suite 350

Memphis, TN 38103

Direct: (901) 425-7234

Fax: (901) 544-0008

From: Abcarian, Michael <mabcarian@fisherphillips.com>

Sent: Wednesday, July 31, 2019 2:01 PM

To: Mohns, Linda <Linda.Mohns@nrlb.gov>; Samuel Morris (smorris@gmlblaw.com) <smorris@gmlblaw.com>

Cc: DALLAS DOCKET <DALLAS_DOCKET@fisherphillips.com>

Subject: Hearing for JSAV and IATSE, Local 69

Dear Ms. Mohns and Mr. Morris,

With regard to the recent notice of hearing in the JSAV and IATSE Local 69 consolidated cases, this is to let you know I am specially set for trial in Dallas before the Occupational Safety and Health Review Commission in OSHRC Docket No. 18-1232. That case is set for October 29, 30 and 31, 2019. The OSHRC's order setting this hearing was issued by the ALJ on May 21, 2019. Because hearing in the JSAV and IATSE Local 69 matter is set to start (but not necessarily conclude) on October 28th (the day before trial proceedings in OSHRC Docket No. 18-1232 will begin), it will be physically impossible for me to prepare, appear for, and try both cases as currently scheduled.

Since the OSHRC hearing was set more than two months before the Region's issuance of the hearing notice herein, I will be requesting postponement of the latter. As for a new hearing start date, I propose rescheduling to December 11, 2019. Please let me know as soon as possible whether you will oppose this so I may include your position in the postponement request. If you oppose, but only because you prefer a different hearing date than December 11, please give me alternative dates to which you're willing to commit.

As always, your courtesy will be appreciated.




Michael V. Abcarian

Regional Managing Partner

Board Certified | Labor and Employment Law | Texas Board of Legal Specialization

Fisher & Phillips LLP

500 North Akard St | Suite 3550 | Dallas, TX 75201

mabcarian@fisherphillips.com | O: (214) 220-8300 | F: (214) 220-9122 | 

[vCard](#) | [Bio](#) | [Website](#) *On the Front Lines of Workplace LawSM*

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error, then immediately delete this message.

EXHIBIT B



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

SUBREGION 26
80 Monroe Ave Ste 350
Memphis, TN 38103-2400

Agency Website: www.nlrb.gov
Telephone: (901)544-0019
Fax: (901)544-0008



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May 2, 2019

MICHAEL ABCARIAN
J & S AUDIO VISUAL COMMUNICATIONS, LLC
255 NORTH MAIN STREET
MEMPHIS, TN 28103-1623

Re: J & S Audio Visual Communications LLC
Case 15-CA-236530

Dear Mr. Abcarian:

Enclosed is a copy of the first amended charge that has been filed in this case.

Investigator: This charge is being investigated by Field Attorney LINDA M. MOHNS whose telephone number is (901)425-7234. If the agent is not available, you may contact Officer in Charge CHRISTOPHER ROY whose telephone number is (901)425-7236.

Presentation of Your Evidence: As you know, we seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations in the first amended charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

Prohibition on Recording Affidavit Interviews: It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

Procedures: Your right to representation, the means of presenting evidence, and a description of our procedures, including how to submit documents, was described in the letter sent to you with the original charge in this matter. If you have any questions, please contact the Board agent. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence

RECEIVED

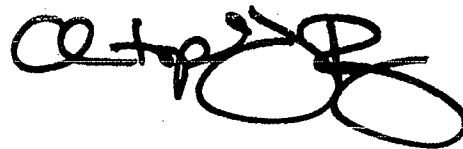
MAY 17 2019

May 2, 2019

submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge.

Very truly yours,

M. KATHLEEN MCKINNEY
Regional Director

A handwritten signature in black ink, appearing to read 'Christopher Roy', with a large, stylized 'R' at the end.

By:

CHRISTOPHER ROY
Officer in Charge

Enclosure: Copy of first amended charge

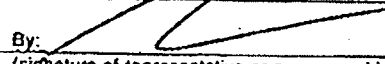
cc: MICHAEL V. ABCARIAN, REGIONAL
MANAGING PARTNER
FISHER PHILLIPS, LLP
500 N AKARD ST
STE 3550
DALLAS, TX 75201

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
FIRST AMENDED CHARGE AGAINST EMPLOYER
INSTRUCTIONS:

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
15-CA-236530	5-2-19

File an original of this charge with NLRB Regional Director in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT		
a. Name of Employer J & S Audio Visual Communications, LLC		b. Tel. No. (214)220-8300
		c. Cell No.
d. Address (street, city, state ZIP code) 255 North Main Street, Memphis, TN 28103-1623	e. Employer Representative Michael Abcarian, Attorney	f. Fax No.
		g. e-Mail
		h. Dispute Location (City and State) Memphis, TN
i. Type of Establishment (factory, nursing home, hotel) Office	j. Principal Product or Service audio & visual services	k. Number of workers at dispute location
l. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.		
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)		
<p>Since about December 1, 2018, on multiple occasions, including February 22, 2019, the Employer, by its agents, officers and supervisors, has threatened and coerced employees in violation of their Section 7 rights, by interrogating employees about their union membership status and threatening employees with discharge if they were or became a member of the Union.</p>		

3. Full name of party filing charge (if labor organization, give full name, including local name and number) International Alliance of Theatrical Stage Employees Local 69	
4a. Address (street and number, city, state, and ZIP code) 3340 Poplar Avenue, Suite 129 Memphis, TN 38111	4b. Tel. No. (901) 327-4994
	4c. Cell No.
	4d. Fax No. (901) 327-8626
	4e. e-Mail
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) International Alliance of Theatrical Stage Employees	
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	
By:  (signature of representative or person making charge)	Samuel Morris Attorney Print Name and Title
Address: Godwin, Morris Laurenzi and Bloomfield, 50 N Front Street, Suite 800, Memphis, TN 38103	Date: 5/2/19
	Tel. No. (901)528-1702
	Office, if any, Cell No. (901)949-1144
	Fax No. (901)528-0246
	e-Mail smorris@gmlblaw.com

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.